HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 986 OF 2006

Nirmal Tiwari,
S/o Hira Ballabh Tiwari,
R/o Malla Gorakhpur,
5/753 Sah Bhawan,
Haldwani (Nainital). .....Applicant.

Versus

State of Uttaranchal .....Opp. Party.

Hon'ble Rajesh Tandon, J.

Heard Sri B.S. Adhikari, counsel for the applicant and A.G.A. for the State.

2. By the present application filed under Section 482 of the Code of Criminal Procedure, the applicant has prayed for quashing of the order passed on 7th September, 2006 by which the right to cross-examination has been refused on the ground that on the earlier occasion the applicant has sought adjournment.

3. A perusal of the order dated 7th September, 2006 shows that on some occasion, the applicant has sought adjournment and on that ground the cross-examination to the applicant has been denied.

4. It is well stated that the right to cross-examination is always available to the accused-applicant and the same cannot be denied to him. The right to cross-examination being part of Article 21 of the Constitution of India, the

same cannot be denied to accused-applicant, who is facing trial.

5. Section 231 (2) of the Code of Criminal Procedure reads as under:

> "(2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination."

6. Section 311 of the Code of Criminal Procedure reads as under:

> **"311. Power to summon material witness, or examine person present.-** Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person if his evidence appears to it to be essential to the just decision of the case."

7. Therefore, in view of the provisions of Sections 231(2) & 311 the Code of Criminal Procedure cross examination cannot be denied to the applicant.

8. In view of the aforesaid, order-dated 07.09.2006, and 29.09.2006 passed by the Chief Judicial Magistrate Bageshwar in Criminal Case No. 347/2006 as well as judgment and order dated 31.10.2006 are quoted.

9. In view of the above, applicants filed under Section 482 of the Cr.P.C. is disposed of. However, court below shall permit the applicant to be cross-examined.

(Rajesh Tandon, J.)

02.12.2006
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